

INDIANAPOLIS DEPARTMENT OF WATERWORKS
BOARD OF DIRECTORS

MINUTES OF THE MEETING OF
FRIDAY, JUNE 7, 2002

The meeting was called to order by Chairperson John Mutz at 6:52 p.m. in the Public Assembly Room of the City-County Building, 200 East Washington Street, Indianapolis, Indiana.

The following members of the Board of Directors (the "Board") of the Department of Waterworks (the "Department") were in attendance: Jack Bayt, Carlton Curry, Barbara Howard, S. Michael Husdon, Alan Kimbell, John Mutz, and Samuel L. Odle.

Chairperson Mutz greeted the other Board members and stated that he wished to advise the public of the actions the Executive Committee (the "Committee") of the Board has taken since the Board's last meeting on April 22, 2002. Chairman Mutz announced on behalf of the Board, he has executed documents in connection with the closing of the purchase of the waterworks business of IWC Resources Corporation and NiSource Inc. by the Consolidated City of Indianapolis, Marion County, Indiana (the "City"). Chairman Mutz specifically stated that one such document included the sale of Irishman's Run Acquisition Corp. by the City which, the Chairman noted, the Board previously approved.

In consultation with the Office of Corporation Counsel (the "Counsel"), the Committee has employed the law firm of SOMMER & BARNARD on a current basis to address certain legal matters. Chairman Mutz stated that the Committee has employed Goldwest LLC ("Goldwest") to determine whether the City should transfer the assets of Utility Data Corporation ("UDC") and if so in what manner. Chairman Mutz noted that the Department has entered into a memorandum of understanding that addresses the sale of UDC's assets, however, the Committee desired that the Board receive further recommendations on the matter from Lane Birch ("Birch") of Goldwest.

Chairman Mutz stated that earlier this afternoon the committee posted notice of the meeting held today and pursuant to applicable law, the Committee was only required to address the hiring of personnel pursuant to the contract management plan. Chairman Mutz emphasized the continued bipartisanship approach undertaken throughout the process. In conjunction with the advice of Counsel, the Committee has employed Kobi Wright as in-house legal counsel and noted that documents concerning his background are available for review by the Board. On the recommendation of Katherine Davis, the City's controller, the Committee has employed Robert Erney as financial manager and has agreed to pursue the employment of Carlton Curry as contract manager and in that position he will become a staff person of the Department acting on behalf of the Board. Chairman Mutz then stated that the Committee will hire another individual to serve as project manager pursuant to the contract management plan.

Chairman Mutz asked if the board had any comments concerning the Chairman's opening remarks and recognizing there were no comments he moved forward to the second item on the agenda of the Board's meeting, approval of the minutes (the "Minutes") of the Board meeting of April 22, 2002.

II. Approval of the Minutes

Chairman Mutz requested that the Board members review the Minutes. Mr. Kimbell moved that the Minutes be approved. Mr. Curry seconded the motion, and a vote was taken. The Board unanimously approved the Minutes. Chairman Mutz signed the Minutes.

Mr. Odle congratulated Mr. Curry on his new position as contract manager and asked Chairman Mutz as to the effective date of the new position. Chairman Mutz responded that he assumes the effective date is this Monday, June 10, 2002, and as of that date, Mr. Curry shall retire from the Board and Dr. SerVaas will subsequently name a member to replace Mr. Curry. The Chairman then moved to the third item on the agenda, proposed Special Resolution 26 recognizing the outstanding service of certain persons to the Department, the Board and the Citizens of Indianapolis.

III. Adoption of Resolution No. 26, 2002

Mr. Odle moved to adopt Resolution No. 26, 2002 and Ms. Howard seconded the motion after which Chairman Mutz asked if any further comments were to be by the Board. Chairman Mutz noted that the City owes those individuals set forth in the resolution its gratitude. Mr. Kimbell stated that he was particularly pleased to see that his friend, Mr. William C. Barnard, *in memoriam*, is set forth in the resolution. A vote was then taken. The Board unanimously adopted Resolution No. 26, 2002.

IV. Financial Report from Deputy City Controller Chuck White

Mr. White presented his report as set forth in *Exhibit A*, attached hereto and made a part hereof. Chairman Mutz asked if there were any questions concerning the report. Mr. Kimbell asked if the costs and fees of retaining consultants since the beginning of the acquisition process were reflected in the report. Mr. White responded that closing costs were not represented in the report. Mr. Kimbell requested that those costs should be presented by firm in the next meeting.

Chairman Mutz stated that in the future he wanted to see a comparison of sales of water of the previous year versus those of the current year. Mr. White responded affirmatively. Chairman Mutz addressed disbursement questioning what amounts have been paid by the Controller's office. Mr. White responded that the Controller's office has made a payment to USFilter Operating Services, Inc. ("USFOS") per the management agreement and property taxes. Chairman Mutz further asked if the amounts stated in the "amount" columns of the report are actual cash payments that the Controller's office has disbursed. Mr. White responded affirmatively.

Chairman Mutz added that the financial report should look like those drafted by private entities to their board of directors or shareholders. Mr. White responded that it was his understanding that the Controller's office would present an accrual type of report on a quarterly basis. Chairman Mutz responded that such a report is fine however that report should at include previous year's financial data on a monthly basis.

V. Report From Jim Buckler of USFOS

Mr. Buckler stated it was a pleasure to be in front of the Board to present his first report. Mr. Buckler then presented his report as set forth in *Exhibit B*, attached hereto and made a part hereof. At the conclusion of the report, Chairman Mutz thanked Mr. Buckler for his report and asked if there were any questions for Mr. Buckler. Chairman Mutz stated that the Gatorade main extension proposal referred to by Mr. Buckler sounded promising. Recognizing there were no questions for Mr. Buckler, Chairman Mutz addressed the next item on the meeting's agenda.

VI. Report from Lane Birch of Goldwest LLC Regarding Review and Recommendation as to the Disposition of UDC and Adoption of Resolution No. 27, 2002

Mr. Birch presented his report as set forth in *Exhibit C*, attached hereto and made a part hereof. Mr. Birch noted that the UDC system is not complete. He added that the attorneys are probably examining the representations and warranties of relevant agreements concerning the system's current status. Mr. Birch further stated that UDC personnel have told him that the redevelopment of the COBOL application and to redo the screens of the system will occur in mid to late July, 2002. Mr. Birch then stated that the next phase of his report is to determine what the Board should do concerning UDC. Mr. Birch asked Chairman Mutz how he should proceed in the presentation of his report.

Chairman Mutz stated the report is self explanatory in that it presents four options to the Board and asked if there were any questions concerning these options. Chairman Mutz stated that the Board should commence by examining the option titled "Keep UDC-Let USF Operate".

Mr. Hudson asked what complications exist with municipal owned entity trying to do business like a private entity such as attempting to generate revenue. Mr. Birch responded that the charter concerning the ownership of the formerly Indianapolis Water Company assets by the city involves municipal financing contracts. Mr. Birch explained that consequently services cannot be performed by an outside entity other than as set forth in the management agreement. Mr. Birch stated the same problem occurs if the Department keeps UDC and licenses the software to UDC. Mr. Birch then asked if there were any questions concerning the options to keep UDC and permit USFOS to operate it or to keep UDC and license the software to USFOS.

MR. Bayt asked if there is a problem with an outside customer base if the Department keeps UDC. Mr. Birch responded that because municipal bonds financed the acquisition

of UDC, strict covenants exist as to outside parties. Mr. Byat asked if options exist given the concerns presented by Mr. Birch. Mr. Birch responded that the Department would have to look at other alternatives for funding in a taxable mode. Mr. Byat asked further how difficult would pursuing such an alternative be. Mr. A. Cott Chinn, Corporation Counsel for the Official City of Indianapolis, responded that while he is not a bond attorney, it is his understanding that strict rules exist as to billing and other matters concerning outside entities. Mr. Chinn deferred to Mr. Robert Clifford, Executive Director of the Indianapolis Public Improvement Bond Bank for further comment.

Mr. Clifford agreed with Mr. Chinn's analysis stating that Ice Miller conducted a complex tax analysis and based on such advice the city has determined it cannot combine tax and tax exempt financing funds. Chairman Mutz asked what would following options 1 or 2 do to the Department's referral customers. Mr. Clifford responded that such customer would be prohibited. Chairman Mutz asked if there were any further questions concerning the options 1 and 2. Recognizing there were none, Chairman Mutz asked Mr. Birch to address option 3.

Mr. Birch stated that selling all or part of UDC to USFOS is contemplated in the management agreement thus the Department would not have to address the public bidding statutes. Mr. Birch added that there are questions as to the status of the assets and that the attorneys should address such questions. Chairman asked if there were questions on the matter.

Mr. Kimbell stated Mr. Birch has put to rest his concerns of the sale of UDC assets USFOS and that the sale should move forward. Mr. Kimbell stated he had asked Mr. Birch on a previous date that in the event the management agreement were terminated and USFOS owned UDC, how would the Department obtain the billings used by USFOS. Mr. Kimbell stated that Mr. Birch told him that means exist to obtain the billings in such an instance. Mr. Kimbell also stated that another issue is that the employees have voted to unionize to protect their pension benefits and that the negotiations of the sale should address that matter. Mr. Birch stated that all employees of UDC are currently USFOS employees.

Mr. Curry stated that not only does the source code need to be protected but also third party proprietary code as well. Mr. Curry stated such code should be placed in escrow in the event the management agreement is terminated. Mr. Curry asked what would happen to third party bought UDC. Mr. Birch responded that over time the customer information is the property of the Department. Mr. Curry responded in agreement and asked what would occur if the product did not function well. Mr. Birch stated that the Department can and should escrow the source information database. Mr. Birch stated that if USFOS defaults or upon the expiration of the management agreement, the Department would be able to step in and run the system. Mr. Birch stated that as to a third party, the Department could address such concerns in representations and warranties of any sale contract.

Mr. Chinn stated that on page two of Exhibit A of Resolution No. 27 that is to be presented for the Boards' consideration, the Department has a right of first refusal concerning the sale of UDC by USFOS which would serve to prevent a sale of UDC by USFOS. Mr. Curry stated that at least half of his concerns have been addressed and that he is confident that the attorneys involved will address his remaining concerns.

Mr. Byat asked in the event of a default under the management agreement, would the Department be able to buy back UDC from USFOS. Mr. Chinn stated the right of first refusal provision conceptually addresses Mr. Byat's question, however, no specific formula exists concerning a buy back of UDC. Mr. Chinn stated such an issue can be addressed in negotiations.

Vice-Chairman Odle stated that if selling to a third party is not a good option, then it should not be an option in the future. Resolution No. 27 should be amended accordingly, if possible. Vice-Chairman Odle also asked how USFOS has organized the relationship that would result from the sale of UDC to USFOS in other localities where USFOS operates. Chairman Mutz asked Mr. Buckler if he could comment on the question.

Mr. Buckler stated in all candor he could not answer the question today as to business models employed elsewhere but could provide such information in the future. Chairman Mutz stated that he had not thought of the issue contemplated by Vice-Chairman Odle. Chairman Mutz then stated that the Board should not tie up USFOS other than the right of first refusal and protecting the Department's ability to process billings. Chairman Mutz stated a business like approach should be followed and that the concerns expressed today could be addressed in negotiations.

Vice-Chairman Odle stated that his concern is if USFOS desires to sell UDC, the Department should have the ability to retrieve those assets and know what the financial obligations would be. Chairman Mutz responded in agreement and stated that he believes such concerns will be addressed in negotiations. Mr. Kimbell added that he hoped Mr. Birch would be involved in the negotiations. Chairman Mutz stated that the Department would examine Mr. Birch's contract to determine if he is still available under his current contract.

Vice-Chairman Odle moved to adopt Resolution No. 27, 2002 and to negotiate the sale. Mr. Curry seconded the motion. Resolution 27, 2002 was adopted unanimously by the Board.

VII. Request of USFOS to Assign Its Obligations Under the Management Agreement to a Newly Formed Limited Liability Company and Adoption of Resolution 28, 2002

Mr. Jim Strain, partner of Sommer & Barnard, Attorneys at Law, PC, introduced the request stating that Section 13.02 of the management agreement permits assignment pursuant to certain conditions. Mr. Strain introduced Bill Neale of USFOS to set forth the rationale of the assignment.

Chairman Mutz recognized Mr. Neale. Mr. Neal set forth his rationale for the assignment as set forth in its letter to Chairman Mutz set forth in *Exhibit C*, attached hereto and made a part hereof. Following the presentation of the report, Chairman Mutz asked if there were any questions. Vice-Chairman ODle asked if this assignment would shield USFOS will